

APPENDIX D:
POLICY FOR RESOLUTION OF WATER USE
CONFLICTS AND WATER RIGHTS
ENFORCEMENT PROCEEDURE

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION
WATER RESOURCES DIVISION
WATER RIGHTS BUREAU

ADMINISTRATIVE POLICY NO. 3	FINAL DATE <u>October 20, 1994</u>
	<p>APPROVED:</p> <p><u><i>Lavettelman</i></u> Chief, Water Rights Bureau</p> <p><u><i>[Signature]</i></u> Regional Office Supervisor</p> <p><u><i>[Signature]</i></u> Administrator, Water Resources Div.</p>

CONFLICT RESOLUTION AND ENFORCEMENT ACTIONS
UNDER THE WATER USE ACT

I. SCOPE

This policy establishes the procedures for facilitating the resolution of complaints of alleged water use violations and the process the department will follow to seek judicial enforcement under Sections 85-2-114 and 85-2-122, MCA. Water Resources Division (Division) staff will first attempt to negotiate a resolution of a conflict between water users. If this is unsuccessful and the violation continues, judicial enforcement may be sought. When the violator refuses to comply with a notice and Order from the department and the department decides to seek judicial enforcement of its order, seek a temporary restraining order, injunctive relief, or to collect a fine, the department will petition the district court according to this policy.

II. AUTHORITY

Under Section 85-2-114, MCA the department may petition the district court upon finding the following:

A person is,

1. wasting water
2. using water unlawfully
3. preventing water from moving to another person having a prior right to the water, or
4. otherwise violating any provision of the Water Use Act.

Further, the department may assess a fine on the violator

under Section 85-2-122, MCA. The fine may not exceed \$1000.00 a day for each day of the violation.

The department may seek a temporary restraining order or injunctive relief and/or petition the court to enforce the penalty and collect the fine.

III. VIOLATIONS FOR ENFORCEMENT

Probably the most frequent violation of the Water Use Act in the state is appropriating water without a water use permit or outside the parameters of a permit. Other violations which may occur include appropriating water outside the parameters of an existing water right or a certificate of water right (gw < 35 gpm and 10 AF), changing a water right without authorization, violating the terms of a basin closure, or controlled groundwater area or wasting water. The more significant violations involve public health issues.

Due to insufficient resources the department is not capable of pursuing every violation which it is aware of therefore, priorities for enforcement must be considered. When determining which violations will be pursued, the department will consider the magnitude and significance of the violation, its effect on the public health or the impact of pursuing enforcement. Other considerations that will affect the type and number of violations pursued will be the availability of regional office and legal staff and the existence of a complaint. A complaint is always required unless the regional manager can document compelling reasons for recommending enforcement without one.

A general prioritization of possible enforcement situations is described in *Exhibit A*. The highest priority would be violations which cause a public health concern. The lowest priority are violations which cause property damage. This is a guide to assist regional managers in making enforcement decisions on various violation situations.

IV. PENALTY / FINE

The department has the authority to assess a fine of up to \$1000.00 a day for violations to the Water Use Act. When the department issues an Order assessing a fine it will be for \$1000.00 per day. However, when going into court the department will justify the amount of the fine. Therefore, in all cases where we may need to assess a fine, all department costs shall be identified and maintained for future justification. All staff associated with the investigation and determination on enforcement shall keep a record of their time (costs). This must include correspondence, other communication costs, field investigation costs, and staff time. When deemed appropriate the department will also consider the economic value of the violation

to the violator. If their continued violation will probably net them more benefit than the cost of the fine, the department must adjust the fine to take this into consideration.

V. CONFLICT RESOLUTION

When the Division receives a complaint alleging a violation, the regional office will follow the steps below in its attempt to resolve the conflict. Not all complaints received by the Division involve immediate and serious injury to a party. Except in unusual circumstances such as an immediate threat to public health or safety, all complaints will be processed beginning at step one below.

Step 1. Complainant makes a "Call"

Advise the complainant to contact the alleged violator and make a "call" on the water that is allegedly being illegally appropriated. This includes sending a written confirmation of the "call" to the alleged violator.

Step 2. Written Complaint

Request that the complainant submit a written complaint to the regional office. The complaint should specify the nature of the alleged violation, who is involved, where it is taking place, and when it occurred. It is recommended the complaint form, *Exhibit B*, be sent to the complainant to complete. Advise the complainant to attach a copy of the written confirmation of the call to the formal complaint.

Step 3. Private Enforcement Option

Suggest mediation between the parties to resolve the issue. Advise the complainant that if they are insisting on immediate court action (in a day or two) that they should plan their own private enforcement action. Also advise the complainant that enforcement action by the department may depend on the complaining party's willingness to pursue litigation or to provide testimony. Further, enforcement will depend on the facts of the case and the availability of resources.

Step 4. Telephone Contact

Upon receipt of the written complaint and a copy of the written call for water, Division staff should seek to contact the other party(ies) by telephone and advise them of the complaint. In many instances, it may be possible to resolve the problem with no further action.

Step 5. Letter 1 - Notice of Alleged Violation

If unsuccessful in resolving the problem by direct telephone contact, send Letter 1 (*Exhibit C*) as soon as possible to the alleged violator. The letter will advise the alleged violator that the department has received a written complaint specifically addressing his/her appropriation of water. Although not meant to assert any conclusion regarding wrongdoing, the letter will notify the alleged violator that a field investigation will be conducted and that if a violation is occurring it must cease immediately. If they are found to be in violation of Montana water law, the department may assess a fine up to \$1,000 per day for each day the violation takes place. It will further explain that the department may join with the complaining party in seeking injunctive relief. The letter will encourage the alleged violator to contact the department about trying to resolve the issue immediately. This letter may be sent first class; certified mail is not required.

Step 6. Field Investigation

Conduct a field investigation as soon as possible if the complaint remains unresolved. If the public health is in imminent danger, conduct the investigation within 2 days of receipt of a complaint. Document such matters as the time, date, location, nature of violation, amount of water involved, type of diversion, and person(s) allegedly causing the violation. Photographs, videos, flow records, water commissioner observations, and water rights records may be possible documentation sources. In the course of conducting the investigation, it is essential to acquire convincing documentation affirming that (a) the alleged violation prompted a valid complaint, and (b) there is a violation of the Montana Water Use Act. Prepare a report of the investigator's findings. Begin documenting the time and costs associated with enforcement.

Step 7. No Violation

If the field investigation does not verify a violation, send a second letter to both the alleged violator and the complainant advising them of the department's findings.

Step 8. Violation Verified

Whenever a field investigation affirms a violation, the regional manager must decide whether to issue an Order assessing a fine at this time.

If the violator acknowledges a violation of the Water Use Act and is willing to work with the department to correct the violation, issuing an Order may be postponed. However to provide documentation, send Letter #2 (*Exhibit D*) setting forth the results of the investigation, the course of action required to rectify the violation, and a deadline date for taking the corrective action. Further, notice shall be included where necessary that the department will follow up this notice with an investigation within 10 days to confirm whether the violator has corrected the violation. Letter #2 must be sent certified with return-receipt requested.

If the violator was not responsive to Letter #1 and is not cooperative in correcting the violation, the regional manager should decide in consultation with the regional office supervisor¹ whether to issue an Order for assessing a fine. The regional manager should send the investigation report and a recommendation to the regional office supervisor. The regional office supervisor shall consult and coordinate with the appropriate bureau chief and program staff, and with legal staff. If the decision is to issue an order proceed as outlined in section VI.

VI. ORDER FOR FINE AND NOTICE OF DEPARTMENT PETITION FOR JUDICIAL ENFORCEMENT

If the regional manager and the regional office supervisor concur that issuance of an Order is appropriate and will be enforced, the regional manager shall send Letter #3 (*Exhibit E*). Enclose the Order of the Department of Natural Resources and Conservation (*Exhibit F*) assessing a fine of \$1000.00 per violation. The letter shall identify the specific violation, the required corrective action, the department finding on noncompliance, the date the fine commences, and notice of the department's intent to seek judicial enforcement of the fine. Further, advise the violator that an inspection of the violation

¹The Regional Manager is encouraged to seek advice from any department staff, e.g., Water Rights Bureau Chief, legal staff, at any point during the dispute resolution or enforcement process. Consultation with the Regional Office Supervisor is whether to proceed with issuing the Order.

will be conducted within ten days of receipt of the Order. If the violator takes corrective action before that time he or she should contact the regional office immediately so they can confirm it. Letter #3 must be mailed certified with return-receipt requested.

VII. PETITION TO DISTRICT COURT

When the violator does not respond to the Order or take the corrective action the department will seek judicial enforcement. The regional office must prepare a report documenting the follow-up investigation and the noncompliance. Enforcement action will be initiated with legal staff preparing a petition for temporary restraining order, preliminary injunction, or petition for enforcement of the fine. The petition shall include the following affidavits:

- 1) Affidavit of DNRC Field Investigator (*Exhibit G*)
(prepared by the field investigator identifying what steps have been taken to obtain voluntary compliance with the Water Use Act, including a copy of the field investigation report),
- 2) DNRC Affidavit Regarding Enforcement Costs (*Exhibit H*),
and, if this action against a violator was initiated by a complaint,
- 3) Affidavit of Injured Water User (*Exhibit I*)

Legal staff will keep the regional office, bureau and Division staff advised of any court actions. Any additional information requested of the department by the court shall be gathered or prepared by the regional office or central bureau staff.

EXHIBIT A

ENFORCEMENT PRIORITY LEVELS	
LEVEL	SITUATION
LEVEL I	Public Health concerns Wasting water egregiously (surface and groundwater)
LEVEL II	Basin Closure violation Controlled Groundwater Area violation Appropriating water without a Permit Violation of Permit/Change Terms or Conditions Change without Authorization Appropriating without a Stock Permit (605)
LEVEL III	Appropriating without a Certificate (602) Exceeding a Claim or Certificate (602) Ignoring a call on a Claim
LEVEL IV	Property Damage

- LEVEL I Suspected violations receive immediate attention in the Regional Office. A field investigation is made within 48 hours of knowledge of alleged violation, whether it is by personal knowledge or written complaint. Immediate attention will be given to deciding whether an enforcement action can and should be pursued.
- LEVEL II Suspected violations receive immediate attention in the Regional Office. Investigation conducted as soon as possible after knowledge of alleged violation. Pursuit of an enforcement action will depend on time and resources.
- LEVEL III Regional Office will contact alleged violator and may conduct investigation. A letter advising violator will be sent. Enforcement action will be a low priority.
- LEVEL IV No DNRC effort will be expended.

Date Received _____

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION
WATER RESOURCES DIVISION

WATER USE COMPLAINT

Mail completed form to the Regional Office serving your county on the back page.

Name of Party Filing Complaint: _____		
Address: _____		
City _____	State _____	Phone _____
Name of Party Causing Harm: _____		
Address: _____		
City _____	State _____	Phone _____

1. Water right(s) being affected: (see DNRC records for your water right nos.)

Source of water: _____

(USGS named stream, unnamed tributary to a USGS named stream, well, spring)

3. Location of **your** diversion or use: (**Attach** a scaled map or aerial photo showing the location of your diversion and use and the other appropriator's diversion and use.)

____ ¼ ____ ¼ ____ ¼ Sec. ____ Twp. ____ N/S Rge. ____ E/W County _____

4. Location of the **other appropriator's** diversion or use:

____ ¼ ____ ¼ ____ ¼ Sec. ____ Twp. ____ N/S Rge. ____ E/W County _____

5. Describe the nature of the problem, what the appropriator is doing and how it is affecting your use of water:

6. Have you made a call for your water or otherwise contacted the appropriator? ____ YES ____ NO

(In most instances, the DNRC will not act if the appropriator has not been contacted by the complainant.)

If Yes, what was the appropriator's response? (Attach a copy of your written "call for water".)

7. Do you have any suggestion for a mediated resolution?

8. Signature of Complainant: _____ Date _____

WATER RESOURCES REGIONAL OFFICES

Billings

1537 Avenue D, Suite 121
Billings, MT 59102
Phone: 657-2105
Fax: 245-2094
Serving: Big Horn, Carbon, Carter,
Custer, Fallon, Powder River, Prairie,
Rosebud, Stillwater, Sweetgrass,
Treasure and Yellowstone Counties

Bozeman

601 Nickles Suite 2
Bozeman, MT 59715
Phone: 586-3136 or 586-3137
Serving: Gallatin, Madison, and Park
Counties

Glasgow

839 First Avenue South
P.O. Box 1269
Glasgow, MT 59230
Phone: 228-2561
Fax: 228-8706
Serving: Daniels, Dawson, Garfield,
McCone, Phillips, Richland,
Roosevelt, Sheridan, Valley and,
Wibaux Counties

Havre

1708 West Second Street
P.O. Box 1828
Havre, MT 59501
Phone: 265-5516 or 265-2225
Fax: 265-2225
Serving: Blaine, Chouteau,
Glacier, Hill, Liberty, Pondera,
Teton, and Toole Counties

Helena

1520 East Sixth Avenue
P.O. Box 202301
Helena, MT. 59620-2301
Phone: 444-6695
Fax: 444-0533
Serving: Beaverhead, Broadwater,
Deer Lodge, Jefferson, Lewis and
Clark, Powell, and Silver Bow Counties

Kalispell

3220 Highway 93 South
P.O. Box 860
Kalispell, MT 59903-0860
Phone: 752-2288
Serving: Flathead, Lake,
Lincoln, and Sanders Counties

Lewistown

311 West Janeaux
P.O. Box 438
Lewistown, MT 59457
Phone: 538-7459 or 538-7012
Serving: Cascade, Fergus, Golden
Valley, Judith Basin, Meagher,
Musselshell, Petroleum, and
Wheatland Counties

Missoula

Town & Country Shopping Center
1610 South 3rd Street West, Suite 103
P.O. Box 5004
Missoula, MT 59806
Phone: 721-4284
Serving: Granite, Mineral,
Missoula, and Ravalli Counties

For Mailing, Use Post Office Box Number

EXHIBIT C

LETTER 1

Date _____

Dear _____ :

As indicated to you by telephone on _____, 199__, the Department of Natural Resources and Conservation has received a complaint from _____ alleging that you are [***facts of alleged violation - the specific dates and locations of where the alleged violation is occurring.***]

Since this matter remains unresolved we need to learn more on the facts of the situation. The Department hereby gives you notice that an employee of the Department will be conducting an on-site investigation of the complaint in the next 10 days. In accordance with Mont. Code Ann. § 85-2-115 (1993) it may require entry upon your land to obtain the needed information.

If you are found to be in violation of the Water Use Act, you are subject to a civil fine in an amount not to exceed \$1000 per violation, and each day of violation constitutes a separate violation. Mont. Code Ann. § 85-2-122(2) (1993). In addition, this Department has the authority under Mont. Code Ann. § 85-2-122(1) (1993) to take you to court to collect the fines imposed against you and ultimately has the authority pursuant to Mont. Code Ann. § 85-2-114(1993) to obtain a temporary restraining order and preliminary injunction to enjoin any unlawful activity.

Therefore, if the alleged activities are occurring they must cease immediately.

Please contact this office immediately if you have any information that can help resolve this matter prior to the investigation being conducted.

Sincerely,

Regional Manager
DNRC

cc: [DNRC Enforcement attorney]
[Helena Central designee]

bcc: [complainant and attorney]

EXHIBIT D

LETTER 2

Date _____

Dear _____ :

The Department has completed its investigation of the complaint from _____ and finds that you are *[specify violation - e.g. in violation of Mont. Code Ann. § 85-2-302, appropriating water without a water use permit]*. This activity is a violation of the Water Use Act. Enclosed is a copy of our report.

You must cease this activity immediately and *[specify any other requirements - e.g. submit a correct and complete application for beneficial water use permit]*. Within the next ten days we will be out again to confirm whether you continue to be in violation of the law. *[In addition, an Application for Beneficial Water Use Permit Form 600 must be filed on or before _____, 199__ (20 days from date)]*.

If the Department finds you remain in violation of the law, the Department will assess you a \$1000 fine for each day there is a violation. In addition, this Department has the authority under Mont. Code Ann. § 85-2-122(1) (1993) to take you to court to collect the fines imposed against you and ultimately has the authority pursuant to Mont. Code Ann. § 85-2-114(1993) to obtain a temporary restraining order and preliminary injunction to enjoin your unlawful activity.

Sincerely,

Regional Manager
DNRC

cc: [DNRC Enforcement attorney]
[Helena Central designee]

bcc: [complainant and attorney]

EXHIBIT E

LETTER 3

(encloses Order)

Date _____

Dear _____ :

This letter concerns [***specify violation*** - e.g. *your appropriation of water without a permit out of Smith Creek*].

As you know, this department by letter of _____, 199__, demanded that you cease the illegal appropriation of water immediately. You were also informed of the fine that could be assessed under Mont. Code Ann. § 85-2-122 for noncompliance.

On _____, 199__, the _____ Regional Office visited [***specify what investigation showed*** - e.g. *your diversion and found it to be still diverting water at a rate of 65 GPM to the field north of your house. This activity is still in violation of Mont. Code Ann. § 85-2-302 which requires a water use permit before any appropriation is made, or whatever the violation is.*]

Pursuant to Mont. Code Ann. § 85-2-122 and the enclosed Order you are hereby assessed a fine of \$1,000 per day for each day your illegal diversion continues commencing on [date]. Each day of violation constitutes a separate offense. Nonpayment of the assessed fine to the Department will be enforced for collection in the appropriate district court.

Contact this office immediately upon ceasing the appropriation. This situation will be monitored closely. Pursuant to Mont. Code Ann. § 85-2-115 your diversion will be reinspected after your receipt of this Order to confirm your compliance with the Order.

Sincerely,

Regional Manager
DNRC

cc: [DNRC Enforcement attorney]
[Helena Central designee]

bcc: [complainant and attorney]

ORDER

OF THE

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

TO:

Under authority vested in the Montana Department of Natural Resources and Conservation (DNRC), you were notified pursuant to Mont. Code Ann. §§ 85-2-112 and -122 (1993) that:

Montana law provides that any person who

is subject to a civil penalty not to exceed \$1000 per violation (and that each day of violation constitutes a separate violation). The DNRC hereby assesses you a \$1000 a day fine for each day of the violation described above commencing

The DNRC will seek judicial enforcement of this Order and seek such other relief as may be necessary and appropriate pursuant to Mont. Code Ann. §§ 85-2-114 and -122 (1993).

DONE AND DATED THIS ____ DAY OF _____ 199__.

DNRC Regional Office Manager

EXHIBIT G

TIM D. HALL
Special Assistant Attorney General
Department of Natural Resources and
Conservation
1520 East Sixth Avenue
Helena, MT 59620-2301
(406) 444-6699

COUNSEL FOR DEPARTMENT OF NATURAL
RESOURCES AND CONSERVATION

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT
OF THE STATE OF MONTANA
IN AND FOR THE COUNTY OF LEWIS AND CLARK

★ ★

STATE OF MONTANA ex rel.
DEPARTMENT OF NATURAL
RESOURCES AND CONSERVATION
Petitioner,

V.

Respondent.

)
)
)
)
)
)
)
)
)
)
)
)
)

Civil No.

AFFIDAVIT
OF
DNRC FIELD
INVESTIGATOR

★ ★ ★ ★ ★ ★ ★ ★ ★ ★ ★ ★ ★ ★ ★ ★ ★ ★

_____, being duly sworn, swears the following to be true:

1. I am _____ [position and DNRC address].
2. I [background, education & training].
3. My duties at the DNRC include investigating complaints of violations of the Water Use Act. I have been in this position for ____ years.

4. [Set out facts of injured water user's complaint, the DNRC investigation and the investigator's conclusion. Attach a copy of the field investigation report. (Do not discuss here what happened as far as noncompliance after the letter and order were sent out - that is being covered in the succeeding paragraph.) Remember that the Judge is busy, knows nothing about the case, and wants to come up to speed on the facts as quickly as possible, so write what happened in the clearest, most concise manner possible.]

5. Pursuant to Mont. Code Ann. § 85-2-114 (4) (1993):

[t]he department must attempt to obtain voluntary compliance through warning, conference, or any other appropriate means before petitioning the district court....

6. The DNRC attempted to obtain voluntary compliance by [set out what was done. Attach a copy of any letters sent to the violator. Describe what the violator did or did not do after their receipt of the DNRC warning letter].

7. Since voluntary compliance was not successful, the DNRC presented [the violator] with a DNRC Order dated ordering them to [describe it]. [Attach a copy of the DNRC Order].

8. Compliance is not taking place, and the Montana Water Use Act continues to be violated.

9. The DNRC seeks to obtain a civil penalty for the violation of the Water Use Act described above. Mont. Code Ann. § 85-2-122 (2) (1993) provides:

A person who violates or refuses or neglects to comply with the provisions of 85-2-114, any **order of the department**, or any rule of the board is subject to a civil penalty not to exceed \$1000 per violation.
Each day of violation constitutes a separate violation.

(emphasis added).

10. The DNRC as of the date of this affidavit seeks a civil penalty of \$_____ (_____ thousand dollars), and seeks an additional \$1000 a day for each additional day's violation between today and the date of hearing or decision in this matter.

11. This enforcement and penalty action was brought against [violation] only after careful investigation and bona fide attempts to obtain voluntary compliance.

FURTHER AFFIANT SAYETH NOT.

DONE AND DATED THIS ____ DAY OF ____ 1994.

[Name & Signature of DNRC employee]

Subscribed and sworn to me this ____ day of ____, 199__, by the above-named _____, known by me to be the person named as the affiant in the above affidavit.

NOTARY SEAL

NOTARY PUBLIC for the State of Montana
Residing at Helena, Montana
My Commission Expires _____

[IF THE DNRC FIELD INVESTIGATOR IS NOT THE SAME PERSON BOTH DOING THE INVESTIGATION AND THE LETTER WRITING, AN ALTERNATIVE TO THE ABOVE AFFIDAVIT WOULD BE TO HAVE:

- 1) an affidavit of the investigator concerning his or her investigation, and
- 2) an affidavit of the Regional Manager or whoever sent out the DNRC enforcement letter and Order.

A DRAFT OF THIS SHOULD ALWAYS BE FAXED OR SENT E-MAIL TO THE DNRC LEGAL STAFF BEFORE BEING FINALIZED.]

TIM D. HALL
 Special Assistant Attorney General
 Department of Natural Resources and
 Conservation
 1520 East Sixth Avenue
 Helena, MT 59620-2301
 (406) 444-6699

COUNSEL FOR DEPARTMENT OF NATURAL
 RESOURCES AND CONSERVATION

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT
 OF THE STATE OF MONTANA
 IN AND FOR THE COUNTY OF LEWIS AND CLARK

STATE OF MONTANA ex rel.)	
DEPARTMENT OF NATURAL)	Civil No.
RESOURCES AND CONSERVATION)	
Petitioner,)	
)	
)	DNRC AFFIDAVIT
v.)	REGARDING
)	ENFORCEMENT
)	COSTS
)	
Respondent.)	

_____, being duly sworn, swears the following to be true:

1. I am _____ [position and DNRC address].
2. My duties at the DNRC include collecting and verifying information regarding the amount of time spent by DNRC employees in enforcement actions.
3. For the above-entitled case, I requested from each DNRC employee an accounting of the time they spent pursuing the enforcement of the Water Use Act. I

then took the amount of time spent by each respective employee times the amount of their hourly wage on file with the DNRC payroll technician. Finally, I figured the total amount expended by the DNRC by adding the dollar amounts determined for each employee as set out below:

DNRC TIMESHEET ON ENFORCEMENT ACTIVITIES

Date	Case	DNRC Employee	Time Expended	\$/hour

Subtotal	
Admin. costs @ x %	
<u>TOTAL</u>	

The enforcement of the Water Use Act in this case cost the taxpayers of the

State of Montana _____. The DNRC seeks a civil penalty pursuant to Mont. Code Ann. § 85-2-122 (1993). Fines collected under that statute will be deposited in the water right appropriation account in the state special revenue fund of the state treasury pursuant to Mont. Code Ann. § 85-2-318 (1993) to help pay the expenses incurred by the DNRC for administering and enforcing part 1, part 3, part 4 and part 5 of chapter 2, Title 85, and Title 37, chapter 43.

FURTHER AFFIANT SAYETH NOT.

DONE AND DATED THIS ____ DAY OF ____ 1994.

[Name & Signature of DNRC employee]

Subscribed and sworn to me this ____ day of ____, 199__, by the above-named _____, known by me to be the person named as the affiant in the above affidavit.

NOTARY SEAL

NOTARY PUBLIC for the State of Montana
Residing at Helena, Montana
My Commission Expires _____

EXHIBIT I

TIM D. HALL
Special Assistant Attorney General
Department of Natural Resources and
Conservation
1520 East Sixth Avenue
Helena, MT 59620-2301
(406) 444-6699

COUNSEL FOR DEPARTMENT OF NATURAL
RESOURCES AND CONSERVATION

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT
OF THE STATE OF MONTANA
IN AND FOR THE COUNTY OF LEWIS AND CLARK

STATE OF MONTANA ex rel.)	
DEPARTMENT OF NATURAL)	Civil No.
RESOURCES AND CONSERVATION)	
Petitioner,)	
)	
)	
v.)	AFFIDAVIT
)	
)	OF INJURED WATER USER
)	
Respondent.)	

_____, being duly sworn, on oath says as follows:

1. I live at _____.
2. I have a water right in [X Creek or whatever, Water Right Claim No. ____ or Permit No. ____] that is being adversely affected by the actions of _____ [who either does not have a water right on record with the DNRC, or who does and it is Water Right Claim No. or Permit No. ____].

3. [Set out in numbered paragraphs for the complainant to sign after legal review the facts of their complaint regarding the violation of their water rights or the Water Use Act by whomever a TRO is being sought against. (The affidavit should clearly convey to a judge who has no knowledge of the facts exactly what has occurred and when - **also, any irreparable damages being suffered should be clearly spelled out**). Also attach a copy of their signed complaint. There should be no major discrepancies between the signed complaint and the subsequent affidavit, so make sure when the complaint is first filed that all the facts are straight. See Department policy requiring a signed complaint before the DNRC will go to court].

FURTHER AFFIANT SAYETH NOT.

DONE AND DATED THIS ____ DAY OF ____ 1994.

[A DRAFT OF THIS SHOULD ALWAYS BE REVIEWED BY THE DNRC LEGAL STAFF BEFORE BEING FINALIZED].

[Name & Signature]

Subscribed and sworn to me this ____ day of ____, 199__, by the above-named _____, known by me to be the person named as the affiant in the above affidavit.

NOTARY SEAL

NOTARY PUBLIC for the State of Montana
Residing at Helena, Montana
My Commission Expires _____

Code Ann. § 85-2-122 (1993). Fines collected under that statute will be deposited in the water right appropriation account in the state special revenue fund of the state treasury pursuant to Mont. Code Ann. § 85-2-318 (1993) to help pay the expenses incurred by the DNRC for administering and enforcing part 1, part 3, part 4 and part 5 of chapter 2, Title 85, and Title 37, chapter 43.

FURTHER AFFIANT SAYETH NOT.

DONE AND DATED THIS ____ DAY OF ____ 1994.

[Name & Signature of DNRC employee]

Subscribed and sworn to me this ____ day of ____, 199__, by the above-named _____, known by me to be the person named as the affiant in the above affidavit.

NOTARY SEAL

NOTARY PUBLIC for the State of Montana
Residing at Helena, Montana
My Commission Expires _____